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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,511	01/27/2004	Edward Snow Willis II	555255012694	2513
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EXAMINER				
BROPHY, MATTHEW J				
ART UNIT		PAPER NUMBER		
2191				
MAIL DATE		DELIVERY MODE		
08/07/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/765,511

Applicant(s)

WILLIS, EDWARD SNOW

Examiner

MATTHEW J. BROPHY

Art Unit

2191

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 July 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-10, 12 and 13.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Wei Y Zhen/
Supervisory Patent Examiner, Art Unit 2191

In Applicant's Remarks of July 7, 2009 Applicant presents arguments: A11-A16, to which the examiner responds here below.

Regarding Argument A11 on Page 8 of Applicant's Remarks: Examiner respectfully disagrees. The change in the grounds of double patenting rejection was necessitated by Applicant's previous claim amendments of February 10, 2009. Therefore the finality of the rejection was proper and will be maintained.

Regarding Argument A12: Examiner's statement on page 11 of the outstanding office action "[sending]...[software identifier] identifying..." was provided in the context of what is NOT taught by Birum, and the examiner is relying on O'Neil to teach "an identifier indicating a carrier company associated with the wireless mobile station..." as further seen on Pages 14 & 15 of the rejection. Further, Regarding Applicant's arguments concerning the "distribution & generation environment, this argument is moot. The examiner quoted Paragraph [0047] to show that the carrier is associated with the generation of updates for the specific wireless devices. However, more pertinent to the question at hand, Paragraph 37 teaches the communicating the type information in the distribution environment, which inherently teaches the identifying of a carrier. This inherency is supported by the Applicant's own arguments. Applicant's argument concerning "identifying a carrier company associated with the wireless mobile station" is not persuasive as it in fact proves the examiner's point. That is, to use applicant's example, the Make/Model of Blackberry Curve 8900 inherently identifies AT&T and T-Mobile as described by the applicant. If applicant's contention is that O'Neil does not teach identifying the one and only carrier, this argument is not persuasive as the claim requires only "indicating a carrier...", not e.g. "indicating only one carrier..." Finally,

Regarding Argument A13: Examiner respectfully disagrees, Applicant's argument is not persuasive for the same reasons as described above with respect to Argument A12.

Regarding Arguments A14 and A16 (A15 is not present between these arguments)- These arguments are not persuasive as they are dependent on the arguments previously addressed above.